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In re Application of
LAM et al.
Application No.: 09/914,543
PCT No.: PCT/US97/08793
Int. Filing Date: 22 May 1997
Priority Date: 22 May 1996
Attorney Docket No.: DIVER1150W01
For: ENDOGLUCANASES

DECISION

This is a decision on applicant's 'Petition Under 37 CFR 1.137(b) for Revival of an Unintentionally Abandoned Application' filed on 18 April 2001 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 22 May 1997, applicant filed international application No. PCT/US97/08793 which claimed priority of an earlier United States application filed 22 May 1996. A copy of the international application had been communicated earlier to the United States Patent and Trademark Office from the International Bureau on 27 November 1997.

On 17 December 1997, a Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 22 November 1998. The application went abandoned for failure to pay the basic national fee.

On 18 April 2001, applicant filed a transmittal letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371 along with a copy of the international application, a petition to revive, and authorization to charge fees to their deposit account.

On 23 August 2001, applicants refiled a copy of the 18 April 2001 submission via "Express Mail" to the attention of the undersigned along with the itemized date-stamped postcard receipt.

DISCUSSION

The itemized postcard receipt provided by counsel is sufficient evidence that a copy of the international application, fee calculation sheet with authorization to charge fees to applicant's deposit account and a petition to revive under 37 CFR 1.137 were filed on 18 April 2001 with the USPTO.

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A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be accompanied by (1) a proper reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply to the filing of a grantable petition pursuant to this paragraph was unintentional", and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Applicant has submitted the proper reply with the submission of the basic national fee, satisfying item (1). With regard to item (2), applicant has provided the appropriate petition fee. As for item (4), since the application was filed after 08 June 1995, no terminal disclaimer is necessary in this application.

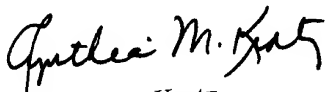
With regard to item (3), applicant's statement that "the entire delay in filing the required U.S. National Application from PCT application US97/08793, from the due date for the filing to the filing of a grantable petition pursuant to 37 C.F.R. 1.137(b) was unintentional" has been interpreted as meaning that "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3) at the time of filing this petition. If this is an incorrect interpretation in view of the rules, petitioner is required to promptly notify this office.

A review of the application file reveals that the required petition fee has been charged to applicant's deposit account and all of the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

CONCLUSION

The petition to revive under 37 CFR 1.137(b) is **GRANTED**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing including issuance of a Notification of Missing Requirements indicating that an oath or declaration executed by the inventors and the surcharge for filing the oath or declaration after the thirty month period.



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